

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

\* \* \*

LAWSON G. STEVE,

Case No. 3:23-cv-00025-MMD-CSD

Petitioner,

ORDER

v.

CATHY TUNI, *et al.*,

Respondents.

Lawson G. Steve has submitted a *pro se* 28 U.S.C. § 2241 habeas corpus petition. (ECF No. 1-1.) His application to proceed *in forma pauperis* is granted. (ECF No. 1.) But on initial review, the Court finds that Steve's claims appear unexhausted, and that federal abstention is appropriate, so the petition is dismissed without prejudice.

Lawson states that he was arrested on October 5, 2022, and is currently in the custody of the Washoe County Sheriff. (ECF No. 1-1 at 3.) He was charged in the Fallon Paiute Shoshone Tribal Court with arson and reckless burning and interfering with law enforcement procedures. (*Id.* at 22-23.) In his petition for federal habeas relief, he alleges that no trial date has been set and that he has been provided no discovery. (*Id.* at 5-7.)

Steve's petition seeks federal judicial intervention in a pending trial court criminal proceeding. *Cf. e.g., Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983); *Carden v. Montana*, 626 F.2d 82, 83-85 (9th Cir. 1980). The comity-based *Younger* abstention doctrine prevents federal courts from enjoining pending state court criminal proceedings, even if there is an allegation of a constitutional violation, unless there is an extraordinary circumstance that creates a threat of irreparable injury. *Younger v. Harris*, 401 U.S. 37, 53-54 (1971). The United States Supreme Court has instructed that "federal-court abstention is *required*" when there is "a parallel, pending state criminal proceeding." *Sprint*

1 *Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013) (emphasis added); *Gilbertson v.*  
2 *Albright*, 381 F.3d 965 (9th Cir. 2004) (federal courts generally abstain from granting any  
3 relief that would interfere with pending state judicial proceedings). Injuries are only  
4 irreparable if the threat to a petitioner's federally protected rights cannot be eliminated  
5 through his defense of the criminal case. *Younger*, 401 U.S. at 46.

6 Generally, courts' reluctance to interfere with on-going state criminal trials extends  
7 to tribal courts. *Means v. Northern Cheyenne Tribal Court*, 154 F.3d 941, 949 (9th Cir.  
8 1998) (overruled on other grounds by *U.S. v. Enas*, 255 F.3d 662 (9th Cir. 2001).  
9 However, this is typically analyzed in the context of the requirement that tribal remedies  
10 be exhausted before the federal courts will get involved. (*Id.*) Federal courts will not  
11 consider a petition for habeas relief until the petitioner has properly exhausted his  
12 available remedies for all claims raised. See *Boyd v. Thompson*, 147 F.3d 1124, 1128  
13 (9th Cir. 1998). The "principles of federalism and comity" that preclude most pre-trial  
14 grants of habeas relief in state cases are reflected [in the tribal court context] in the  
15 exhaustion requirement. See *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 15 & 16 n. 8,  
16 107 S.Ct. 971, 94 L.Ed.2d 10 (1987) (holding, in the context of a civil case, that  
17 "considerations of comity direct that tribal remedies be exhausted before the question is  
18 addressed by the District Court").

19 Here, Steve states that he has filed motions to dismiss and for discovery in Tribal  
20 Court. (ECF No. 1-1 at 6.) He also filed a pretrial habeas petition in Tribal Court in January  
21 2023. (*Id.* at 6-7.) Thus, he is pursuing relief in that court. The Court further notes that this  
22 case does not present extraordinary circumstances. Steve challenges the alleged delay  
23 in setting a trial date and in obtaining discovery. (*Id.* at 5-7.) Defendants in state criminal  
24 proceedings routinely allege that state criminal proceedings violate their constitutional  
25 rights, including fundamental rights, which makes this a regular occurrence, not an  
26 extraordinary circumstance. Steve's situation is no different in substance from that of any  
27 criminal defendant facing the potential loss of constitutional rights—including the most  
28

1 fundamental right, to liberty—in a pending criminal prosecution. Finally, it does not appear  
2 that dismissal of this action without prejudice will materially impact the analysis of any  
3 issue in a later-filed habeas proceeding or otherwise result in substantial prejudice.

4 It is therefore ordered that Petitioner's application to proceed *in forma pauperis*  
5 (ECF No. 1) is granted.

6 It is further ordered that the Clerk of Court file the petition for writ of habeas corpus.  
7 (ECF No. 1-1.)

8 It is further ordered that the petition is dismissed without prejudice.

9 It is further ordered that a certificate of appealability is denied.

10 It is further ordered that the Clerk of Court enter final judgment dismissing this  
11 action and close this case.

12 DATED THIS 24<sup>th</sup> Day of February 2023.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE